

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection

Division of Water

(New Administrative Regulation)

401 KAR 5:072. Concentrated Animal Feeding Operations.

RELATES TO: KRS 224.10-100, 224.16-050, 224.16-060, 224.20-100, 224.20-110, 224.20-120, 224.70-100, 224.70-110, 33 U.S.C. 1342

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.20-110, 224.70-110, 33 U.S.C. 1342

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe permits to discharge into any waters of the Commonwealth. KRS 224.16-050 further empowers the cabinet to issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water Pollution Control Act. KRS 224.20-110 authorizes the cabinet to regulate the emission or discharge of air contaminants into the air under the jurisdiction of the Commonwealth. This administrative regulation establishes certain conditions applicable to KPDES permits for concentrated animal feeding operations.

Section 1. Applicability.

This administrative regulation applies to beef, dairy, poultry, and swine concentrated animal feeding operations.

Section 2. Owner and Operator Liability.

(1) All persons who own or operate a concentrated animal feeding operation shall sign an application for and obtain a KPDES permit. This includes a person who enters into a contract with an owner or operator of a concentrated animal feeding operation if the person:

- (a) Owns the animals;
- (b) Directs the manner in which the animals will be housed or fed; or
- (c) Controls the inputs or other material aspects of the concentrated animal feeding operation.

(2) All owners and operators of a concentrated animal feeding operation shall be jointly and severally liable for complying with the KPDES permit.

Section 3. Siting Criteria.

(1) A livestock barn, poultry house, lagoon, or land application area constructed or expanded after February 14, 2000 shall not be located in:

- (a) A state or national park, state or national forest, or nature preserve; or
- (b) A wellhead protection area approved by the cabinet pursuant to 401 KAR 4:220.

(2) A livestock barn, poultry house, or lagoon constructed or expanded after February 14, 2000 shall not be located in:

- (a) A 100-year floodplain unless permitted pursuant to 401 KAR 4:060;
- (b) A jurisdictional wetland as determined by the Natural Resources Conservation Service; or
- (c) A sinkhole or other enclosed depression where subsidence is evident.

(3) The setback requirements established by this subsection shall apply as follows:

(d) A barn, lagoon, poultry house, litter storage structure, composting site, or waste handling structure constructed or expanded after February 14, 2000 at a concentrated animal feeding operation;

(b) A barn, lagoon, poultry house, litter storage structure, or composting site constructed or expanded after February 14, 2000 at an animal feeding operation, if the construction or expansion will cause the animal feeding operation to become a concentrated animal feeding operation; and

(c) Land application of waste at a concentrated animal feeding operation.

BEEF SITING CRITERIA

SETBACK FEATURE ₃	BARN, LAGOON	LAND APPLICATION AREA	
		Injection	Other Method
Dwelling not owned by applicant, church, school, schoolyard, business, other structure to which the general public has access, park ₄	1,500 feet	500 feet	1,000 feet
Incorporated city limit _{4,5}	3,000 feet	1,000 feet	2,000 feet
Lake, river, blue-line stream, karst feature	150 feet	75 feet	150 feet
Water well not owned by applicant ₄	300 feet	150 feet	150 feet
Downstream ₁ water listed in 401 KAR 5:030 as exceptional water or outstanding national resource water; or outstanding state resource water ₂	1 mile	750 feet	1,500 feet
Downstream ₁ public water supply surface water intake	5 miles	1 mile	1 mile
Roadways, primary (state and Federal)	150 feet	75 feet	150 feet
Roadways, secondary (county)	150 feet	75 feet	150 feet

₁Measured along gradient

₂Designated outstanding state resource waters are listed in 401 KAR 5:026

₃Measured from the edge of the barn, lagoon, or land application area to the nearest edge of the setback feature

₄Existing at the time the first KPDES permit is issued

₅For existing operations, land application setbacks do not apply

DAIRY SITING CRITERIA

SETBACK FEATURE ₃	BARN, LAGOON	LAND APPLICATION AREA	
		Injection	Other Method
Dwelling not owned by applicant, church, school, schoolyard, business, other structure to which the general public has access, park ₄	1,500 feet	500 feet	1,000 feet
Incorporated city limit _{4,5}	3,000 feet	1,000 feet	2,000 feet
Lake, river, blue-line stream, karst feature	150 feet	75 feet	150 feet
Water well not owned by applicant ₄	300 feet	150 feet	150 feet
Downstream ₁ water listed in 401 KAR 5:030 as exceptional water or outstanding national resource water; or outstanding state resource water ₂	1 mile	750 feet	1,500 feet
Downstream ₁ public water supply surface water intake	5 miles	1 mile	1 mile
Roadways, primary (state and Federal)	150 feet	75 feet	150 feet
Roadways, secondary (county)	150 feet	75 feet	150 feet

₁Measured along gradient

₂Designated outstanding state resource waters are listed in 401 KAR 5:026

₃Measured from the edge of the barn, lagoon, or land application area to the nearest edge of the setback feature

₄Existing at the time the first KPDES permit is issued

₅For existing operations, land application setbacks do not apply

POULTRY SITING CRITERIA

SETBACK FEATURE ₃	POULTRY HOUSES,	LAND
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	LITTER STORAGE, OR COMPOSTING SITE	APPLICATION AREA	
		Injection	Other Method
Dwelling not owned by applicant, church, school, schoolyard, business, other structure to which the general public has access, park ₄	1,500 feet	300 feet	300 feet
Incorporated city limit _{4,5}	2,000 feet	1,000 feet	1,500 feet
Lake, river, blue-line stream, karst feature	150 feet	75 feet	75 feet
Water well not owned by applicant ₄	300 feet	200 feet	200 feet
Downstream ₁ water listed in 401 KAR 5:030 as exceptional water or outstanding national resource water; or outstanding state resource water ₂	1 mile	500 feet	500 feet
Downstream ₁ public water supply surface water intake	1 mile	500 feet	500 feet
Roadways, primary (state and Federal)	150 feet	75 feet	75 feet
Roadways, secondary (county)	100 feet	75 feet	75 feet

₁Measured along gradient

₂Designated outstanding state resource waters are listed in 401 KAR 5:026

₃Measured from the edge of the barn, lagoon, or land application area to the nearest edge of the setback feature

₄Existing at the time the first KPDES permit is issued

₅For existing operations, land application setbacks do not apply

SWINE SITING CRITERIA

SETBACK FEATURE ₃	BARN, LAGOON	LAND APPLICATION AREA	
		Injection	Other Method
Dwelling not owned by applicant, church, school, schoolyard, business, other structure to which the general public has access, park ₄	1,500 feet	500 feet	1,000 feet
Incorporated city limit _{4,5}	3,000 feet	1,000 feet	2,000 feet
Lake, river, blue-line stream, karst feature	150 feet	75 feet	150 feet
Water well not owned by applicant ₄	300 feet	150 feet	150 feet
Downstream ₁ water listed in 401 KAR 5:030 as exceptional water or outstanding national resource water; or outstanding state resource water ₂	1 mile	750 feet	1,500 feet
Downstream ₁ public water supply surface water intake	5 miles	1 mile	1 mile
Roadways, primary (state and Federal)	150 feet	75 feet	150 feet
Roadways, secondary (county)	150 feet	75 feet	150 feet

₁Measured along gradient

₂Designated outstanding state resource waters are listed in 401 KAR 5:026

₃Measured from the edge of the barn, lagoon, or land application area to the nearest edge of the setback feature

₄Existing at the time the first KPDES permit is issued

₅For existing operations, land application setbacks do not apply

(d) The cabinet may grant a variance from the setbacks in this section for a dwelling not owned by the applicant, or church if the applicant obtains from the owner of the property in question an easement, properly filed of record, granting the applicant a permanent exemption

from the distance requirements in this administrative regulation. A certified copy of this easement shall be submitted to the cabinet with the permit application.

Section 4. Permanent Litter Storage.

(1) Poultry concentrated animal feeding operations shall provide permanent litter storage structures by October, 2001.

(2) The requirements of Section 3(3) of this administrative regulation shall not apply to the siting of permanent litter storage structures on poultry concentrated animal feeding operations in existence prior to February 14, 2000.

Section 5. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.